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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 334.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

REPLY TO BRIEF IN OPPOSITION.

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In the Brief in Opposition, counsel for the Board has continued to perpetuate the misconception that the NMU picketing somehow related to a dispute over jurisdiction or representation. It is apparent that counsel is resorting to this fallacious argument in a desperate effort to cure the defect in the Board's jurisdiction arising from the lack of a "labor dispute" as defined in the Act. However, despite the constant repetition of this argument, the record makes it abundantly clear that it is contrary to the facts, without any evidential basis and is not supported by any findings by the Board.

It is clear that the Marine Engineers Beneficial Association (MEBA) and the National Maritime Union (NMU) do not represent the same type of employees. MEBA repre-

sents only licensed marine engineers whereas NMU represents unlicensed seamen. Neither can encroach upon the other's jurisdiction under their charters from the AFL-CIO. Since NMU members and MEBA members do not perform the same work and do not compete for the same jobs, under no circumstances could a dispute between them be considered a jurisdictional dispute. *NLRB vs. Radio Engineers Union,* 364 U. S. 573 (1961).

It is similarly clear that the MEBA and the Seafarers International Union (SIU), which represents unlicensed seamen, are not affiliated unions. In fact, a statement by the Court of Appeals for the District of Columbia Circuit that they were affiliated (Petition, p. 43, footnote 1) brought forth a loud storm of protest from MEBA counsel (see letter from David Scribner, Esq. printed as Appendix A to this Reply Brief). The District of Columbia Court of Appeals' confusion of SIU with MEBA was the result of certain gratuitous comments by counsel for the Board—comments which were completely without foundation in the record as SIU was in no way involved in the picketing and was not claiming any jobs on the *Maximus.* When this error was called to the Court's attention, it immediately filed an amended opinion (Petition, p. 59).

However, despite the clearly established fact that NMU and MEBA were not competing for the same jobs, as well as the indisputable fact that the SIU was in no way involved in the dispute, the Board in its Brief continues to advance the erroneous proposition that SIU is somehow involved. Thus, it begins its Statement of the Case as follows:

> "The present cases arise out of a dispute concerning representation of employees of the S.S. *"Maximus"* between the Marine Engineers Beneficial Association (MEBA) and the Seafarers Inter-

national Union (SIU) on the one hand and the National Maritime Union (NMU), petitioners here, and its affiliate, the Brotherhood of Marine Officers (BMO), on the other." (Brief in Opposition, p. 2).

THIS STATEMENT SIMPLY IS NOT TRUE. There is no evidence in the record to support it, the Board made no such finding, and counsel's constant repetition of this erroneous statement serves only to mislead and to confuse the issues. So that there will be no confusion on this point, and at the risk of being redundant, we can only repeat:

1. This case does not involve a dispute over representation as NMU and MEBA do not represent the same type of employees.

2. This case does not involve a jurisdictional dispute as NMU and MEBA members do not compete for the same jobs.

Since there was no controversy over representation, no controversy over jurisdiction, and, as the Board itself concedes, no controversy over "terms or conditions of employment," there was no "labor dispute" as defined in Section 2(9) of the Act. Accordingly, the Board was without jurisdiction and on this basis alone, the decision below should be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN
Counsel for Petitioner

APPENDIX A.

Letter from David Scribner, Esq.

Law Offices

PRESSMAN & SCRIBNER

April 29, 1965

Mr. OGDEN W. FIELDS, Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N. W.
Washington 25, D. C.

Re: National Maritime Union of America *v.* National Labor Relations Board (D.C. Cir. No. 18,789 dec. April 17, 1965).

Dear Sir:

We have just read the opinion of the District of Columbia Circuit as reported in 51 CCH Lab. Cas. Para. 19,637. National Marine Engineers Beneficial Association AFL-CIO, which we represent, was, as you know, not a party to that proceeding. We note a serious error of fact in the opinion of that court.

In Footnote 1 the Court states as follows:

> "The employees in question appear to be marine engineroom officer personnel, and the union organizations immediately involved are the Marine Engineers Beneficial Association, an affiliate of SIU, and the Brotherhood of Marine Officers, an affiliate of NMU. For convenience, we refer throughout to the parent unions."

We also note that in referring to the picket signs the Court refers to the legend on the picket signs as follows:

Appendix A.

> "Information picketing, MEBA [SIU] Engineers interfere with employers lawfully recognizing NMU."

In purporting to quote a statement made by an NMU agent the opinion of the Court refers to the statement as follows:

> "We want you to be good and mad . . . I want you to call Paul Hall [the International President of SIU] and tell him to call off the MEBA [SIU] pickets on the Maximus."

It must first be noted that the bracketed reference to "SIU" in the legend on the picket sign as set forth by the Court did not actually appear on the legend.

The insertion of the bracketed "SIU" in the Court's quotation of the NMU agent's statement referred to above likewise did not appear to be part of the actual statement made by the agent.

The Court's statement in Footnote 1 referred to above is inaccurate and could not possibly be based on any record before the Court since it is an undeniable fact, and one of public record, that National Marine Engineers Beneficial Association is not an affiliate of the Seamen's International Union (SIU) but is an independent national union affiliated with the AFL-CIO. It would appear that because of the initial error made by the Court in this footnote the bracketed material referred to above was inserted.

We have read the decision and order of the Board (which was the subject of review by the District of Columbia Circuit), as reported in 1964 CCH National Labor Relations Board Para. 13,277, and we find nothing there which would support the mistaken reference by the Court that MEBA is an affiliate of SIU.

While we have not as yet had an opportunity to see the record before the Board in this matter we would venture to

say that there could be nothing in that record which would establish the existence of such affiliation.

The error made by the Court in this matter is of such a serious nature as it affects the MEBA that it warrants immediate action by the Board to have the error corrected, particularly since the Board as a public agency of the United States cannot permit the perpetuation of a serious error of which it has been made aware.

We sincerely trust that immediate steps will be taken to cause the error to be corrected. We would appreciate hearing from you as to what action the Board will take in this matter.

Sincerely,

DAVID SCRIBNER

DS/sb